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**IN THE
COURT OF APPEALS OF INDIANA**

IN RE THE MATER OF THE INVOLUNTARY)
TERMINATION OF PARENT-CHILD)
RELATIONSHIP OF K.L., MINOR CHILD)
AND HER ALLEGED FATHER,)

MICHAEL LAWSON,)

Appellant-Respondent,)

vs.)

MARION COUNTY OFFICE OF)
FAMILY AND CHILDREN,)

Appellee-Petitioner,)

CHILD ADVOCATES, INC.,)

Appellee (Guardian-ad-Litem.))

No. 49A04-0606-JV-298

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Deborah Shook, Commissioner
Cause No. 49D09-0407-JT-212

January 9, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Michael Lawson appeals the juvenile court's termination of his parental rights to his biological daughter, K.L. He argues that the evidence is insufficient to prove that (1) the circumstances leading to K.L.'s removal are unlikely to be remedied and (2) the continuation of the parent-child relationship here poses a threat to the well-being of K.L. Finding that the evidence need only support one or the other of these reasons for termination and that the evidence is sufficient as to the first inquiry, we affirm the termination of Lawson's parental rights.

Facts and Procedural History

The underlying facts of this case, as presented by this Court's previous ruling in *Lawson v. Marion County Office of Family and Children*, 835 N.E.2d 577, 578 (Ind. Ct. App. 2005), are as follows:

Father was married to Clareena Lawson ("Mother"), and they had two children together, K.L. and J.L. Mother also has other children with different fathers. In July 2003, Dee Evers, an investigator with the Marion County Office of Family and Children ("OFC"),^[1] went to Mother's home to follow up on a referral from Youth Emergency Services ("YES"), which had removed three of Mother's children. When Evers arrived, she observed that the house was very dirty, including dried human feces on the carpet in an upstairs bedroom, a "filthy" toilet and sink in a bathroom, dirty dishes piled up in the kitchen sink, and "long standing dirt" throughout the house. Transcript at 33-34. In addition, Evers observed an old dishwasher and dead birds lying in the front yard.

¹ Prior to July 1, 2005, what is now the Marion County Office of Department of Child Services ("DCS") was known as the Marion County Office of Family and Children ("OFC"); therefore, much of the documentation in this case refers to the organization by its former designation. We refer in this opinion to the DCS unless citing to a source referring to the OFC.

Father and Mother brought K.L., who was three years old at the time, and her sister D.S. to YES at approximately 10:00 p.m. that evening, and Eysers observed that both girls were “very dirty” and had head lice. *Id.* at 37. The girls were also very hungry and reported that they had not eaten all day. Caseworkers at YES cleaned the girls up and ultimately placed them in foster care. YES had earlier removed J.L., who was four months old at the time, and discovered that he had a severe diaper rash. J.L. had to undergo inpatient medical treatment to treat the rash, which was extensive and had caused open and bleeding sores. J.L. ultimately died of sepsis as a result of the diaper rash.

K.L. was found to be a Child in Need of Services (“CHINS”), and the trial court entered a dispositional order making K.L. a ward of the OFC. The OFC placed K.L. in foster care and referred Father for services, including a parenting assessment, a drug and alcohol assessment, parenting classes, and drug screens. Father completed both initial assessments, but he did not consistently undergo drug screens and he did not complete the recommended drug treatment program or parenting classes. In addition, Father did not maintain contact with his case manager at the OFC. But Father did have relatively consistent visitation with K.L.

K.L. has thrived since being placed with her foster mother, Laura Good. K.L. was exhibiting significant behavioral problems at the time she was declared a CHINS, but those began to improve through therapy and with Good’s supervision. K.L. has bonded well with her foster family, and she gets to visit with her biological siblings from time to time.

Lawson failed to appear at the trial in this previous case after receiving proper notice, although his lawyer was present early in the proceedings. However, testimony regarding Lawson’s fitness as a parent was presented after his attorney left the courtroom. We determined that Lawson’s due process rights were violated, and we reversed and remanded to the trial court. A retrial was held, and the trial court again terminated Lawson’s parental rights to K.L. This termination on retrial is the subject of the present appeal.

The retrial was held on May 5, 2006, and Lawson again failed to appear despite having received notice of the proceedings. Lawson's attorney, however, remained present throughout the duration of the trial. At the retrial, evidence again was presented showing that Lawson repeatedly failed to report for drug screens and that he did not complete the drug treatment program recommended by the DCS. Evidence also indicated that K.L. continues to do well in her foster home, where she has lived for approximately three years now.

Additionally, Shane Dietz, a DCS case manager who had been assigned to K.L.'s case through September 2005, testified that the DCS had been involved with the Lawson family even before the events that led to the CHINS petition. Tr. p. 41. He also testified that Lawson completed some drug screens, but that he missed a series of nine screens. *Id.* at 45. Dietz testified that after K.L. was determined to be a CHINS, Lawson never progressed far enough toward fulfilling the recommendations of the DCS—noting specifically the recommended drug treatment program—to become eligible for any home-based counseling services, which are offered when a parent demonstrates the ability to reunify with his or her child. *See id.* at 44. Dietz testified that Lawson did not contact DCS for a substantial period of time before the February 2005 trial, and between the time of that trial and the May 2006 retrial, Lawson only attempted to contact DCS once and even then only spoke with a supervisor, not K.L.'s case manager. *Id.* at 43, 48. According to Dietz's testimony, Lawson last visited with K.L. in July 2004, and he has not asked anyone at DCS about her or her well-being since that time. *Id.* at 60.

Following retrial, the juvenile court entered its order terminating the parent-child relationship between K.L. and Lawson. The order references numerous evidentiary findings and then concludes, in part:

26. There is a reasonable probability that the conditions which resulted in the removal of the child and the reasons for her continued placement outside Mr. Lawson's care will not be remedied, and that continuation of the parent-child relationship poses a threat to the child's well-being.

Appellant's App. p. 10. This appeal now ensues.

Discussion and Decision

Lawson contends that the juvenile court erred in terminating his parental rights to K.L. Among the requirements that must be met before a juvenile court may terminate parental rights, Indiana Code § 31-35-2-4(b)(2) states, in pertinent part, that the court must determine that:

(B) there is a reasonable probability that:

- (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied;
- or
- (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child

This statute is written in the disjunctive and so requires a finding as to only one of the two factors listed. The DCS must prove this element by clear and convincing evidence. Ind. Code § 31-37-14-2; *In re Termination of Parent-Child Relationship of L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *reh'g denied, trans. denied*.

We will not set aside a trial court's judgment terminating a parent-child relationship unless we determine that it is clearly erroneous. *M.H.C. v. Hill*, 750 N.E.2d 872, 875 (Ind. Ct. App. 2001). Findings of fact are clearly erroneous when the record

lacks any evidence or reasonable inferences to support them. *Id.* In determining whether the evidence is sufficient to support the judgment terminating parental rights, this Court neither reweighs the evidence nor judges the credibility of witnesses. *Id.*

Lawson contends that the juvenile court erred in determining that (1) the conditions that led to K.L.'s removal will not be remedied and that (2) continuation of the parent-child relationship poses a threat to K.L.'s well-being. Because the juvenile court's decision must be upheld if its determination as to either of these two issues was correct, we need only address the first issue—whether the conditions that led to K.L.'s removal are likely to be remedied.

To determine whether the conditions that resulted in K.L.'s removal will be remedied, the trial court must look to the parent's fitness at the time of the termination proceeding. *In re Termination of Parent-Child Relationship of D.L. & C.L.*, 814 N.E.2d 1022, 1027-28 (Ind. Ct. App. 2004), *trans. denied*. In addition, the court must look at the patterns of conduct in which the parent has engaged to determine if future changes are likely to occur. *Id.* at 1028. When making its determination, the trial court can reasonably consider the services offered to the parent and the parent's response to those services. *Id.*

First, we pause to acknowledge Lawson's argument that because K.L. was removed from her mother's home and Lawson was not living with them at the time of removal, the trial court cannot make any finding as to Lawson that the conditions resulting in K.L.'s removal *from him* are unlikely to be remedied. We do not find the reasons for K.L.'s removal from Lawson to be so limited.

The DCS points out that Lawson and K.L.'s mother were still married at the time of K.L.'s removal, and the couple had an ongoing relationship despite the fact that they were living apart. Appellee's Br. p. 4 (citing Tr. p. 24, 31). On the day K.L. was removed, she was with Lawson, who had picked her up from his wife's residence. We agree with the DCS that the juvenile court could have inferred from this evidence that Lawson was aware of the conditions in which K.L. was living.

Moreover, the CHINS petition filed with the juvenile court on July 25, 2003, indicates the deplorable conditions in which K.L. and her siblings were being kept. *See* Ex. 1. It further provides, as to Lawson specifically, that he has "not yet successfully demonstrated to the MCOFC the ability or willingness to appropriately parent" K.L. *Id.* at para. 5(B). When questioned about this portion of the CHINS petition during the retrial, DCS case manager Delaine Evers testified that this statement was based on the fact that Lawson brought K.L. to the DCS upon their request and that he never demonstrated or alleged that he had an appropriate home for K.L. or that he was willing to assume physical custody of her. Tr. p. 25. Furthermore, Lawson admitted to the allegations in the CHINS petition at the initial hearing on this case. *See* Appellee's Br. p. 11; Ex. 4 (Order of July 25, 2003).

Proceeding, then, to consider Lawson's fitness as a parent at the time of the termination trial, the DCS presented substantial evidence that the conditions leading to K.L.'s removal were unlikely to be remedied. Although Lawson had attended an initial parenting assessment, parenting classes, and a drug and alcohol evaluation, he failed to participate in or complete other services that could have demonstrated his ability and

willingness to provide a home for K.L. Lawson admits that he did not submit to all of the random drug screens ordered by the DCS, and the testimony of case manager Dietz indicates that he missed a total of nine screens. Further, the DCS recommended that Lawson participate in a drug rehabilitation program to prepare for reunification with K.L., and Lawson never took any steps, as far as we can tell from the record, to enter the program.

Additionally, Lawson has made little attempt to maintain contact with the DCS in order to continue visitation with K.L. Early in this case, Lawson was granted weekly visitation with K.L. He initially attended visitation regularly, but his attendance eventually became sporadic. Tr. p. 69. Following visits with Lawson, K.L. would demonstrate difficult behaviors including bedwetting, nightmares, aggressive behavior, and general acting out, *id.* at 67-68, 72-77, and the juvenile court suspended Lawson's visitation with K.L. sometime around July 2004, presumably for this reason.² See Appellant's Br. p. 5; Tr. p. 76. Since that time, Lawson has only contacted DCS once, and even then he did not speak with K.L.'s case manager or attempt to inquire as to his daughter's well-being. Further, despite having received notice, Lawson failed to attend either the first trial or the retrial where his parental rights were terminated. These facts indicate that Lawson's interest in K.L. and her welfare has been, at best, sporadic.

In light of the evidence presented on retrial, we are unable to say that the juvenile court committed clear error in finding that the conditions resulting in removal were unlikely to be remedied. The DCS presented sufficient evidence indicating that Lawson

² Both parties reference the juvenile court's action suspending visitation in the context of these behaviors, but neither party nor anything else in the record directly indicates the reasons the court suspended visitation.

remains unable to care for K.L. Furthermore, Lawson's pattern of behavior, lack of attention to K.L.'s welfare, and refusal to participate fully in drug screening and drug rehabilitation programming provide sufficient evidence to support the juvenile court's finding that the circumstances resulting in K.L.'s removal from Lawson are unlikely to be remedied. We therefore affirm the juvenile court.

Affirmed.

BAILEY, J., and BARNES, J., concur.